

ORIGINAL

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

In re Applications of )

MM Docket No. 93-89

AURIO A. MATOS )

File No. BPH-911114MS

LLOYD SANTIAGO-SANTOS and LOURDES )  
 RODRIGUES-BONET )

File No. BPH-911115MP

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To: The Review Board

DEC 23 1993

**STATEMENT IN SUPPORT AND  
 CONTINGENT EXCEPTIONS TO  
 INITIAL DECISION OF  
AURIO A. MATOS**

FEDERAL COMMUNICATIONS COMMISSION  
 OFFICE OF THE SECRETARY

Aurio A. Matos ("Matos"), by his counsel and pursuant to §1.276 of the Commission's Rules respectfully submits his Contingent Exceptions to the Initial Decision, FCC 93D-20, released November 4, 1993 (the "ID"). Only the standard comparative issues were designated for hearing, and in the ID, Matos was found to be the comparatively superior applicant in light of his slight preference in the comparative coverage and past broadcast experience elements of the standard comparative issue. Matos agrees with the conclusions of the Administrative Law Judge ("ALJ"), although the preference for coverage should have been more substantial than "slight.". However, in the event exceptions are filed by his opponent, Matos would seek review and reversal of the ALJ's interlocutory orders denying his petitions to enlarge issues against Lloyd Santiago Santos and Lourdes Rodrigues Bonet ("Santiago and Bonet"), and excepts to the rulings in Order, 93M-538 and Memorandum Opinion and Order, 93M-673.

**I. THE STANDARD COMPARATIVE ISSUE**

1. Using the Commission's Policy Statement on Comparative

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Hearings, 1 FCC 2d 393 (1964) as a guide, the ALJ concluded that applicant Matos and applicant Santiago and Rodrigues were both entitled to 100% quantitative integration credit with both applicants' equally enhanced by their proposals to provide auxiliary power and by a minority preference since all are members of a recognized minority group. (ID ¶ 18) Neither applicant sought credit for past local residence or civic involvement, but both applicants proposed to relocate to Culebra in the event their application was granted. (Id.) The only disparities between the two applicants, according to the ALJ, "relate to the past broadcast experience of the principals and the areas and populations to be served by the two proposals." (Id.) The ALJ properly concluded that Matos was superior on both points.

2. With respect to comparative coverage, the Commission awards comparative enhancement credit to applicants that propose greater overall coverage even if the areas are already adequately served. Simon Geller, 90 FCC 2d 250, 268-269, 276 (1982); Family Broadcasting Group, 93 FCC 2d 771, 779 (¶ 17) (Rev. Bd. 1983), rev. denied, FCC 83-559 (1983). The ALJ found that Matos proposed to serve 69,092 people in an area of 440 square kilometers within his 60 dBu contour, while Santiago and Rodrigues proposed to serve only 1,542 people in a 44 square kilometer area. (ID ¶ 17) Matos was awarded a slight preference for his superior coverage proposal. (ID ¶ 19). <sup>1/</sup>

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<sup>1/</sup> In Geller, which had previously been the largest recorded coverage disparity between two competing applicants, an applicant was awarded a slight preference for proposing to serve eight times

3. As for past broadcast experience, the record shows that Matos was General Manager of WRFE-FM, Mayaguez City, Puerto Rico from 1980 through 1989, then General Manager of WJDZ (now WVKR), Levittown, Puerto Rico, as well as President and a director of the licensee entity from 1989 through July 31, 1992. Since then, and at the time of the trial, Matos was Station Manager of WCXQ(AM), Moca, Puerto Rico. (ID ¶ 8) That represents thirteen years of uninterrupted broadcast managerial experience.

4. Santiago worked as a sales person at WQIL, San Juan, Puerto Rico from 1981 to 1982, then as General Manager at WMSW(AM), Hatillo, Puerto Rico from 1982-1991. (ID ¶ 12) Rodriguez' only experience at a radio station was as an accountant at WQBS, San Juan, Puerto Rico for one year. (ID ¶ 14) The ALJ properly concluded that Matos was entitled to a "very slight preference" for his record of superior past broadcast experience (ID ¶ 19) <sup>2/</sup>, and the ID proposed a grant of the Matos application. (ID ¶ 20)

## II. THE INTERLOCUTORY ORDERS

### A. The July 12, 1993 Petition to Enlarge Issues Against Santiago and Rodriguez

5. Matos filed a Petition to Enlarge Issues against Santiago and Rodriguez on July 12, 1993 (hereafter cited as "Pet I"). Matos

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the population in four times the area of its competitor. In the instant case, Matos takes exception with the ALJ's conclusion that serving forty-five times the population and ten times the area is not worthy of anything more substantial than a "slight" preference.

<sup>2/</sup> Should Exceptions be filed by Santiago and Rodriguez, Matos would argue that his past broadcast experience superiority entitles him to more than the "very slight preference" awarded by the ALJ.

sought the addition of financial qualification/certification issues against his competitor. In the Petition, Matos showed that Santiago and Rodrigues stated that personal funds in the amount of \$65,000 would be used to help cover their \$125,000 projected costs of construction and initial operation. (Pet. I at ¶ 5) Matos then examined the personal financial statement of the couple and found that in terms of liquid assets, Santiago and Rodrigues listed only a \$35,000 certificate of deposit. (Pet. I at ¶ 6) The other assets listed were non-liquid and required appraisals in order to calculate the value of the assets to determine if, in fact, Rodrigues and Santiago had ready access to \$65,000 worth of liquid assets. <sup>3/</sup> In addition, Rodrigues and Santiago listed liabilities in the amount of \$148,000. (Pet. I at ¶¶ 6-8; Ex. 1, pp. 1-2)

6. Matos argued that applicants, when certifying their financial ability to meet the projected construction and initial operations costs, must have supporting documentation on hand to bolster the certification. (Pet. I at ¶ 9) Revisions to FCC Form 301, 4 FCC Rcd 3853 (¶ 43) (1989). In addition, each item listed as a source of funds that is not a financial institution must have sufficient net liquid assets on hand and committed to the project to support the financial certification of the applicant. (Pet. I at ¶ 10) Northampton Media Associates, 4 FCC Rcd 5517 (¶ 15) (1989), aff'd sub nom., Northampton Media Associates v. F.C.C., 941 F.2d

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<sup>3/</sup> Rodriguez and Santiago listed as assets 50% of the common stock of El Periodico Del Norte, a \$20,000 "investment" in El Periodico Del Norte; a \$30,000 "amount due" from El Periodico Del Norte and a dwelling unit in Marina Bahia Catano, Puerto Rico that they assign a \$140,000 value to without any appraisal. (Id. ¶ 6)

1214 (D.C. Cir. 1991); Port Huron Family Radio, Inc., 5 FCC Rcd 4562 (§ 5)(1990). Finally, Matos explained that the Commission's practice is that the valuation of non-liquid assets, such as non-publicly traded stock, must be supported by substantial and reliable evidence to prove the value. (Pet. I at § 11) Roxanne Givens, 5 FCC Rcd 5371 (Rev. Bd. 1990), recon. den., 5 FCC Rcd 2905, rev. den., 6 FCC Rcd 2961 (1991); Port Huron, supra. Assessment of the value of real estate that an applicant might be relying on to sell or hypothecate similarly requires an appraisal to prove its value. (Pet. I at § 12) Port Huron, supra.; Donald E. Hilgendorf, 4 FCC Rcd 5004 (Rev. Bd. 1989).

7. In their opposition, Santiago and Rodrigues argued only that the evidence was clear that they had \$65,000 of "available funds" to meet the commitment. (Opp. I at § 7). However, their argument ignored the question of how the \$148,000 in liabilities might affect their ability to have access to that \$65,000.

8. The ALJ denied the addition of the requested issue. Order, 93M-538, released August 20, 1993. In the event Santiago and Rodrigues file exceptions to the ALJ's ID, Matos asks the Review Board to review and reverse the ALJ's decision not to grant his Petition to add financial qualification/certification issues against Santiago and Rodrigues.

B. The August 9, 1993 Petition to Enlarge Issues  
Against Santiago and Rodrigues

9. Based on deposition testimony and an examination of the alleged location of their public inspection file, Matos sought the addition of public file, Section 1.65, local publication and

misrepresentation issues against Santiago and Rodrigues in a Petition to Enlarge Issues filed on August 9, 1993 (hereafter cited as "Pet II"). In depositions taken on June 24, 1993, Rodrigues, the partner charged with responsibility for the establishment and maintenance of the applicant's public file, testified that until June 23, 1993, there was no public file in Culebra. (Pet II at ¶ 6). Rodrigues claimed that she had established the public file at the city's "Alcaldia" or City Hall on June 23, 1993 (Id.)

10. Matos visited Culebra on August 2, 1993 and decided to review the Rodrigues and Santiago public file. To his surprise, he was told by everyone at the Alcaldia that they had no knowledge of such file. (Pet II at ¶ 7) So, Matos argued that a public file issue should be added against Santiago and Rodrigues since, for eighteen months, they had not been maintaining a public file in the proposed community of license. (Pet II at ¶¶ 9-16) See, Visionary Radio Euphonics of Lake County, Inc., 55 RR2d 269 (ALJ 1984). At the time the petition was filed, approximately six weeks had passed from the alleged establishment of the public file in Culebra, yet no public notice of the establishment of the file there had been accomplished. (Pet II at ¶¶ 17-25).

11. Matos also alleged that, based on the actions of Santiago and Rodrigues with respect to the Commission's public file, publication of local notice and amendment rules, <sup>4/</sup> they had

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<sup>4/</sup> Matos had also filed a Petition to Enlarge Issues against Santiago and Rodriguez for their failure to, over eighteen months after their application was filed, disclose the media interests of other family members. See, Petition to Enlarge Issues filed May 14, 1993. The ALJ denied that petition. See, Order, FCC 93M-351,

demonstrated a substantial enough inattention to and carelessness regarding the Commission's rules and policies that a reporting issue should be added. (Pet II at ¶¶ 26, 27)

12. Finally, Matos argued that a misrepresentation issue should be designated against Santiago and Rodrigues because, under oath at their depositions, they had both testified that a public file had been established in Culebra on June 23, 1993, but there was no such file at the location they testified to have established the file. (Pet II at ¶ 28)

13. Santiago and Rodrigues opposed the Petition, arguing inter alia that the failure to establish the public file in Culebra until nineteen months after the application was filed was inconsequential, and that Santiago (not Rodrigues) had sent the application to Culebra on June 23, 1993, to be picked up by a third party who would establish the public file. (See, Opposition to Petition to Enlarge filed August 31, 1993) No proof of shipping from or evidence of delivery to the parties involved was provided. Nor was any explanation as to why, after six weeks, the applicants did not check to make sure that the file had been established or why, if they thought it had been established, there was no effort to provide local public notice of the establishment of the public file in Culebra.

14. The Presiding Judge declined to add any of the requested issues, issuing a Memorandum Opinion and Order, FCC 93M-673, released October 26, 1993 only days before handing down the Initial

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released June 14, 1993.

Decision. In the event Rodrigues and Santiago file exceptions to the ID, Matos requests review and reversal of the ALJ's interlocutory decision not to add the issues requested in his August 9, 1993 Petition to Enlarge.

### III. CONCLUSION

15. Matos concurs with the findings made by the Presiding Judge in the ID handed down in this proceeding. He also concurs with the ultimate conclusion granting his application. However, in the event exceptions are filed by his competitor, Matos would argue that he is entitled to more than a "slight" preference for his vastly superior coverage proposal and a greater than "very slight preference" for his greater past broadcast experience. Further, if exceptions are filed by Santiago and Rodrigues, Matos respectfully submits that the ALJ erred in not designating the issues Matos specified in his June 12, 1993 and August 9, 1993 Petitions to Enlarge Issues against the competing applicant, and requests Review Board review and reversal of those interlocutory orders (93M-538 and 93M-673, supra.). <sup>5/</sup>

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Respectfully submitted,  
AUDIO A. MATOS

  
\_\_\_\_\_  
Scott C. Cinnamon

  
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John B. Kenkel  
His Counsel

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<sup>5/</sup> Matos submits that even if exceptions are filed by Santiago and Rodriguez, there will be no need for oral argument to resolve the issues presented on appeal.



CERTIFICATE OF SERVICE

I, Scott Cinnamon, do certify that on this 3rd day of December, 1993, a copy of the foregoing was sent via first class mail, postage pre-paid or delivered, as indicated, to the parties set forth below:

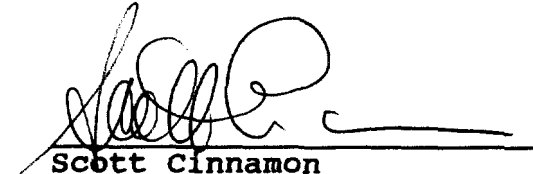
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